

RECEIPT # 56287
AMOUNT \$ 150
SUMMONS ISSUED _____
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. M
DATE 6-2-04

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2004 JUN -2 P 1:18

U.S. DISTRICT COURT
DISTRICT OF MASS.

CIVIL ACTION
NO.:

FRONTIER FISHING CORP.

Plaintiff,

v.

DONALD EVANS, Secretary of the
UNITED STATES DEPARTMENT OF
COMMERCE; AND CONRAD C.
LAUTENBACHER, JR., UNDER
SECRETARY FOR OCEANS AND
ATMOSPHERE/ADMINISTRATOR AND
DEPUTY UNDER SECRETARY

Defendants.

04-cv-11171-DPW

MAGISTRATE JUDGE Collings

PLAINTIFF'S COMPLAINT
PARTIES

1. Plaintiff, Frontier Fishing Corp., is a registered corporation of the Commonwealth of Massachusetts located at 133 McArthur Drive, New Bedford, MA. It is owner of a United States commercial fishing vessel, the F/V SETTLER.
2. Defendant Donald Evans is Secretary of Commerce and is charged by the Magnuson Stevens Fishery Conservation and Management Act, 16 USC sec. 1681, et seq., ("FCMA") with carrying out the provisions of that statute, including promulgation and enforcement of regulations to implement the Northeast Multispecies Fishery management Plan. ("NMFMP")
3. Defendant Conrad C. Lautenbacher is the Under Secretary for Oceans and Atmosphere/Administrator and Deputy Under Secretary.

JURISDICTION AND VENUE

4. The actions of Defendants are reviewable under § 1855 of the Fishery Conservation and Management Act ("FCMA," 16 U.S.C. § 1801, et seq.); and the Administrative Procedure

Act, 5 U.S.C. § 551, et seq., and § 701, et seq. This court has jurisdiction of this action pursuant to those statutes and 28 U.S.C. §§ 1331, 1346, 2201 and 2202.

5. Venue is proper in this court because the plaintiff resides in Massachusetts, the plaintiff is a Massachusetts corporation, and the offices of the Defendants are located in various cities in Massachusetts.

FACTS

6. Frontier Fishing Corp. is the owner of the F/V SETTLER, a scalloper.
7. On or about February 28, 2000, Frontier Fishing Corp. was charged with fishing within a restricted gear area and assessed an initial penalty of \$10,000 in addition to a 30-day suspension of its scallop days-at-sea allocation. On or about August 5, 2003, an administrative law judge issued a decision and order upholding the agency's initial determination, and assessed a civil penalty of \$35,000 in addition to a 30-day suspension of its scallop days-at-sea allocation. A copy of the decision is annexed hereto.
8. Frontier Fishing Corp. sought discretionary review by the NOAA administrator which was denied, copy annexed hereto, and now brings this appeal from his decision, and permit sanction to challenge the findings of the judge, and the implementation of the fine.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE ADMINISTRATIVE PROCEDURES ACT **APPEAL OF AGENCY ACTION**

9. The allegations of paragraphs 1 through 8 are incorporated by reference.
10. Defendants' actions in finding a violation of the regulation and imposition of fines and sanctions were not supported by substantial evidence in the record, were arbitrary,

capricious, unreasonable, and were unnecessary to effectuation of a legitimate public purpose, and were in violation of law.

RELIEF REQUESTED

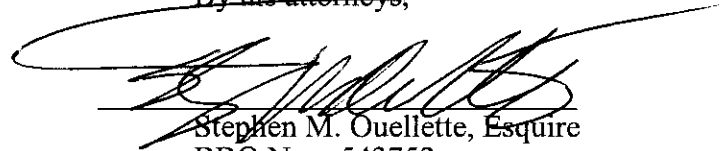
Plaintiff respectfully requests that the Court enter judgment against the defendants as follows:

- A. Set aside the Agency's finding of a violation;
- B. Enter a preliminary and permanent injunction setting aside the agency's action;
- C. Order the agency to remit the paid fine to the plaintiff;
- D. Grant the plaintiff its costs and fees under the Equal Access to Justice Act;
- E. Grant plaintiff such further relief as this court deems just and proper.

Dated: June 2, 2004

FRONTIER FISHING CORP.

By his attorneys,



Stephen M. Ouellette, Esquire

BBO No.: 543752

David S. Smith, Esquire

BBO No.: 634865

CIANCIULLI & OUELLETTE

163 Cabot Street

Beverly, MA 01915

Tel: (978) 922-9933

Fax: (978) 922-6142

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DISTRICT OF MASSACHUSETTS
CLERK'S OFFICE

FRONTIER FISHING CORP.

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DONALD EVANS, Secretary of the
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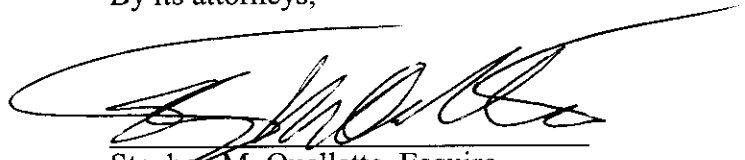
COMPLAINT

CORPORATE DISCLOSURE

Frontier Fishing Corp. is a Massachusetts business, which is closely held by individuals and not publicly traded.

FRONTIER FISHING CORP.

By its attorneys,



Dated: June 2, 2004

Stephen M. Ouellette, Esquire
BBO No.: 543752
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JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Frontier Fishing Corp.

DEFENDANTSDonald C. Evans and Conrad C. Lautenbacher in their
capacities as officials of the United States Govt.(b) County of Residence of First Listed Plaintiff Bristol County
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed MASSACHUSETTS
(IN U.S. PLAINTIFF CASES ONLY)IN U.S. PLAINTIFF CASES ONLY, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen M. Ouellette Esquire, Cianciulli & Ouellette
163 Cabot Street, Beverly, MA 01915

Attorneys (If Known)

Office of the United States Attorney

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Challenge to administrative decision, 16 USC sec. 1681, APA 5 USC sec. 551

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

June 2, 2004

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERKS OFFICE1. Title of case (name of first party on each side only) Frontier Fishing Corp. v. Donald L. Evans

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See

local rule 40.1(a)(1)).

☐

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

☒II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730,
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.*Also complete AO 120 or AO 121
for patent, trademark or copyright cases☐III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.☐IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.☐

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Stephen M. Ouellette, Esquire, Cianciulli & OuelletteADDRESS 163 Cabot Street, Beverly, MA 01915TELEPHONE NO. 978-922-9933